Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANTS:

CRYSTAL SHARP BAUER
Merrillville, Indiana

ATTORNEYS FOR APPELLEES:

DAVID BEACH
MEGAN C. BRENNAN
Eichhorn & Eichhorn
Hammond, Indiana

STEPHEN A. TYLER
Blackmun Bomberger Tyler & Walker
Highland, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DAVID BRADLEY DRAWBAUGH and CYNTHIA SUE DRAWBAUGH,	)	
Appellants-Appellants,	)	
vs.	)	No. 45A05-0710-CV-579
THE METHODIST HOSPITAL, INC. and DR. PAUL J. STANISH,	)	
Appellees-Defendants,	)	
vs.	)	
JIM ATTERHOLT,	)	
Third-Party Respondent.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Kavadias Schneider, Judge
Cause No. 45D01-0609-MI-31

October 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

David Drawbaugh and Cynthia Drawbaugh appeal the trial court's denial of their motion to correct error and / or their motion to set aside dismissal following the trial court's order dismissing their complaint for medical malpractice against The Methodist Hospital, Inc. (the "Hospital"), Dr. Paul Stanish, and Jim Atterholt.[1] The Drawbaughs raise one issue, which we revise and restate as:

I. Whether the trial court abused its discretion by denying the Drawbaughs' motion to correct error; and

II. Whether the trial court abused its discretion by denying the Drawbaughs' motion for relief from judgment under Ind. Trial Rule 60(B)(8).

We affirm.[2]

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[1] Jim Atterholt is the Commissioner of Insurance for the Indiana Department of Insurance.

[2] In their reply brief, the Drawbaughs argue:

> Dr. Stanish's Brief was filed with the Court on June 30, 2008, fourteen (14) days late and therefore, arguably, should not be considered in ruling in this matter. It appears that Dr. Stanish erroneously believed that because of the Notice of Defect was tendered to Appellants' [sic] based on a pagination error that Appellants' Brief was not filed until the Notice of Defect was cured, on May 27, 2008. However, since the defect was timely cured, Appellants' Brief was deemed filed pursuant to App. R. 23(D) on May 12, 2008, making the Appellee's Briefs due no later than June 16, 2007 [sic].

Appellants' Reply Brief at 10 n.1. Ind. App. Rule 23(D) provides that "[w]hen the Clerk accepts any document as received but not filed, any time limit for response or reply to that document shall run from the date on which the document is filed. The Clerk shall notify all parties of the date on which any received document is subsequently filed." The docket has the following entries for May 12, 2008: "****RECEIVED 05/15/08: APPELLANT'S BRIEF (9) & APPELLANT'S APPENDIX (2)*****" and "*****NOTE: APPENDIX IS OVER THE PAGE LIMIT." The docket indicates that appellant's brief was "FILED" on May 27, 2008. The Drawbaughs' briefs are also file stamped "MAY 27 2008." Thus, pursuant to Ind. App. Rule 23(D), any time limit for response or reply to the Drawbaughs' appellate brief

The relevant facts follow.[3] On July 10, 2006, the Drawbaughs filed a complaint against Dr. Stanish and the Hospital with the Indiana Department of Insurance. The complaint alleged that David received medical treatment from Dr. Stanish and the Hospital from June 29, 2004, through July 3, 2004, that the medical treatment was negligent, and that the Drawbaughs incurred "medical expenses, additional treatment, related expenses, lost wages and/or intangible damages" as a result of the treatment. Appellants' Appendix at 18-19.

On August 17, 2006, Dr. Stanish served interrogatories and a request for production of documents on the Drawbaughs. On August 21, 2006, the Hospital served interrogatories and a request for production of documents on the Drawbaughs.

On February 22, 2007, Dr. Stanish filed a petition for preliminary determination and motion to compel discovery responses with the Lake County Superior Court. The petition alleged, in part:

* * * * *

> 2. On August 17, 2006, counsel for [Dr. Stanish] served interrogatories and requests for the production of documents upon the respondents. Answers were due within thirty (30) days pursuant to Trial Rules 33 and 34. . . .

"shall run from the date on which the document is filed," which, in this case, was May 27, 2008. Thus, we do not find the Drawbaughs' argument persuasive.

[3] We note that the Statement of Facts section of the Drawbaughs' appellate brief contains some argument. We remind the Drawbaughs that the Statement of Facts section "shall describe the facts relevant to the issues presented for review," is to be a narrative statement of facts, and is not to be argumentative. Ind. Appellate Rule 46(A)(6); Parks v. Madison County, 783 N.E.2d 711, 717 (Ind. Ct. App. 2002), reh'g denied, trans. denied.

> 3. On October 26, 2006, counsel for [Dr. Stanish] wrote the [Drawbaughs], to inquire as to the status of the overdue discovery responses. . . .
>
> 4. On December 19, 2006, [Dr. Stanish]'s counsel again inquired about the absence of any discovery responses, and noted that during a previous phone conversation [the Drawbaughs'] counsel had stated her clients' responses would be filed by the end of the year. [Dr. Stanish]'s counsel noted that the discovery responses were 90 days overdue. . . .
>
> 5. On January 31, 2007, [Dr. Stanish]'s counsel phoned respondents' counsel in an effort to have a discovery conference, per T.R. 26(f). . . .
>
> 6. On February 5, 2007, [the Drawbaughs'] counsel requested an extension until February 15, 2007. [Dr. Stanish]'s counsel granted the request and noted that if the responses were not received, a motion to compel would be forthcoming. . . .
>
> 7. The [Drawbaughs] have failed to tender responses to [Dr. Stanish]'s discovery requests.

Id. at 21. On February 26, 2007, the trial court ordered the Drawbaughs to "provide complete and non-evasive discovery responses to [Dr. Stanish's] discovery requests within 20 days." Id. at 47.

Similarly, on February 27, 2007, the Hospital filed an amended petition[4] for a preliminary determination of law and motion to compel discovery that alleged:

> 3. [The Drawbaughs] did not answer or object to [the interrogatories and requests for production that were filed on August 21, 2006] within the time specified by the rules of evidence, and written reminders regarding this discovery were sent to the Drawbaughs'

[4] The Hospital had filed a petition for preliminary determination of law and motion for summary judgment with memorandum in support on the basis that the Drawbaughs missed the statute of limitation. However, the Hospital later withdrew this petition.

attorney, on November 20, 2006, November 29, 2006, and January 22, 2007. . . .

4. In compliance with Ind. Trial Rule 26(F) and Rule 8(C), Lake Superior Court, counsel for the hospital telephoned [the Drawbaughs' attorney] regarding the hospital's discovery on February 1, 2007, but was unable to speak with her at that time. [The Drawbaughs' attorney] has not returned counsel's telephone call.

5. By letter dated February 5, 2007, [the Drawbaughs' attorney] requested additional time through February 15, 2007, in which to respond to the hospital's discovery. . . .

6. To date, [the Drawbaughs] have not answered or objected to the hospital's outstanding discovery, and they should be compelled to respond thereto within a reasonable time to be specified by the court.

Id. at 49-50.

On March 2, 2007, the trial court entered an order that found the Hospital's petition meritorious and ordered the Drawbaughs to "answer or respond, as required by law, to the interrogatories and requests for production of documents previously served upon them by the hospital in the underlying medical malpractice case within 20 days from the date of this order." Id. at 79. The order also stated that the Drawbaughs "are further admonished that failure to comply with this order may result in sanctions pursuant to Ind. Trial Rule 37(B), which could include dismissal with prejudice of their underlying medical malpractice action." Id. at 79-80.

On March 21 or 22, 2007, after the expiration of the twenty-day time limit in the trial court's February 26, 2007 order, the Drawbaughs filed unsigned answers to Dr. Stanish's interrogatories and a response to Dr. Stanish's request for production of

documents.[5] On March 22, 2007, Dr. Stanish filed a motion for dismissal pursuant to Ind. Trial Rule 37(B)(2)(c) and alleged that the Drawbaughs failed to comply with the trial court's order of February 26, 2007, which ordered the Drawbaughs to "provide complete and non-evasive discovery responses to [Dr. Stanish's] discovery requests within 20 days." Id. at 47.

On March 27, 2007, after the expiration of the twenty-day time limit in the trial court's March 2, 2007 order, the Drawbaughs served the Hospital with answers to their interrogatories and informed the Hospital that the signature page was not included but would be forwarded as soon as David Drawbaugh returned the signature page. In particular, the Drawbaughs answered the Hospital's Interrogatory 11 as follows:

> 11. Do you know of ***any*** written or oral statement by a medical practitioner of any kind containing a remark or opinion concerning the quality of care, treatment of services rendered to David Bradley Drawbaugh by the hospital in this case? If so, for ***each*** statement state the name and address of the practitioner who made the statement, whether the statement was written or oral, the date of the statement, and the substance of the statement.
>
> ANSWER:
>
> 1.) Dr. Paul J. Stanish. Both orally and to a lesser degree in his post-operative report Medical Records Methodist Hospital Southlake.
> 2.). Dr. Daniel B. Hurwich. Orally to a lesser degree and Written. Medical Records. Methodist Hospital Southlake.
> 3.) Dr. Kumar Venkat. Orally post-operative. Medical Records. Methodist Hospital Southlake.

[5] The Drawbaughs state that they served the answers on March 21, 2007, and Dr. Stanish states that the Drawbaughs served the unsigned answers on March 22, 2007.

4.) Dr. Ramakrishnan Unni, M.D., F.A.C.S.. Both orally and written. Discovery continues and this answer will be duly supplemented if necessary.

See also Notes attached to Request for Production Response. Discovery continues and this answer will be duly supplemented if necessary.

Id. at 300. The Notes attached to the Request for Production Response contained what appear to be David Drawbaugh's statements regarding the doctors' statements to him. The Notes provided the address and phone number for each of the doctors referenced. The Notes stated:

Internalists:
Gastroenterologists – Group Practice
Internal Medicine Associates
8895 Broadway, Merrillville, IN 46411
219-738-2087:

Peter G. Mavrelis, M.D. Primary Treating Physician – was on vacation when hospitalized. Seen years previous and following hospitalization. Can verify that there was no hernia prior to late May early June 2004.

Daniel B. Hurwich, M.D. Attending Physician – admitting & attending – hosp. During Remicade treatment on June 23, 2004 observed weight loss, abdominal distention, fever, and hernia – coupled with other symptoms recommended admission same day. Followed my care while I was in hospital. More cautious in his wording, but also stated that he didn't know why he (surgeon) went in (entry above bladder) where he did and seemed concerned that my bladder was cut. Stated that I would have to have catheter in longer and probably go home with it. Said he was anxious to see what Dr. Unni (urologist) thought about the incident. . . .

Kumar Venkat, M.D. Attending Physician – hospital. Seen while in hospital before and after surgery. . . . Said that he also did not know why surgeon did it and that "he shouldn't have done it and messed near your bladder." Removed dressing to observe entry over bladder. Shook his head a couple of times. Stated that he was surprised that surgeon would have need to make an entry over top bladder especially given nature of surgery –

hernia repair and small bowel exploratory. Stated that he was glad that he was not the one who did it to me. . . .

Urologist/Surgeon

P.R. Unni, M.D., F.A.C.S. Consulting Urologist & Attending. (Still under his care).
8300 Broadway
Merrillville, IN 46410
219-769-8641:

Dr. Unni saw me before surgery and after on referral from Dr. Hurwich. . . . After surgery, Dr. Unni came in room and had serious demeanor. I told him what surgeon said to me following surgery. He said that he was informed by surgeon. He looked at my dressing by my bladder. He folded his arms and said emphatically that the "[surgeon][6] should not have done that. There was no need to go in there [at that entry point]. The orders were only for repair of a hernia and small bowel exploratory. I was going to go in there after surgery and do some tests but they will have to wait now. He [surgeon] was not supposed to do anything with your bladder." . . . Dr. Unni told me to watch for any blood in urine. He also told me that I would have to remain in hospital awhile longer since bladder was injured and that I would also have to have a catheter in for a longer period. Dr. Unni came to see me everyday. . . . He stated that I have a neurogenic bladder and explained that once a bladder sustains injury such as a cut or tear that sometimes not only the muscle is damaged but nerves that affect the performance of the bladder. He stated that the neurogenic bladder was permanent and that I would need to remain on Flomax and be wary of urinary tract infections. . . . He suggested possibility of need to be catheterized from time to time and since my wife was a nurse, she could teach me how to cath myself. . . . He also told me with regard to lost sensation and ejaculation that I had retrograde ejaculation. He told me that this also could stem from same cause and that semen was actually flowing into my bladder instead of out. He gave me Uroxatral that he said may help. I remain under Dr. Unni's care.

Neurologist:

[6] Bracketed text appears in original.

Daksha Vyas, M.D., Diplomate American Board of Neurology.
200 East 89th Avenue, Ste. 3B
Merrillville, IN 46411
219-769-7861

. . . . She did diagnose me with insomnia, anxiety, and depression – prescribing Ambien, Xanax, and Elavil. She urged me to follow up my care with my gastroenterologists and urologist.

General Surgeon/Specializes [self-report] on gastric band surgery for obese patients
Former chief of surgery at Methodist.

Paul J. Stanish, M.D.
9239 Broadway
Merrillville, IN 219-756-4900
And
801 MacArthur Blvd.
Munster, IN 219-836-4900

. . . . Dr. Stanish stated that he does not normally operate on Crohn's patients and does not like to as a rule. . . . In pre-operation visit introduced resident/intern and asked permission for his presence. Explained that he would go in laparascopy through umbilical and another two holes – one to be an incision 3-4 inches where hernia was and another small hole up from it. Following surgery – awoke to four dressings. I was surprised and alarmed to see a dressing immediately above my bladder and close to my penis. Dr. Stanish came in and said "do you want to hear the good news first for [sic] the bad news." I didn't answer. He seemed nervous. He said "the good news is that I saw no signs of active Crohn's disease so nothing there and then he explained that he had fixed my hernia with mesh. Then he said "I don't know how to tell you this . . . It's the first time it's ever happened to me . . . I've never done this before . . . I should have known better . . . you're not an obese patient . . . but when I went in by your bladder to look around I cut through your abdominal wall and before I realized it I had cut or "nicked" your bladder." Quickly, he recovered, saying, "It was just a 'nick . . . nothing real bad . . . but to be on the safe side I put in two layers of sutures. You should be fine." . . . . He said that I should be fine other than I may need to have catheter in a few more days . . . adding hopefully you'll have it [catheter] out before you go home." He also reminded me to watch for blood or blood clots in urine. I asked him if

> resident/intern was performing any part of procedure and he did not respond but changed subject. He tried to explain how "there is a protective tip to cannula and that when I punched through . . . or cut through, it is supposed to cover the tip . . . ." He stated again that he never had anything like this ever happen to him before . . . remarking that he is used to working on mostly obese patients. He also said that he performs mostly gastric band surgery for obese patients. . . . I saw him later in his office for a follow-up visit. He had another intern in with him [female] on that visit and although he did not bring up the subject of my bladder, I did. He tried to make light of it and told the intern, "you remember the situation I told you about . . . this is him. [meaning me]" . . . again going briefly into explanation about something that is to protect tip when cutting. . . .

Appellants' Appendix at 397-401.

> Interrogatory 18 and the Drawbaughs' initial answer follow:
>
> 18. Have you been advised by ***any*** doctor, surgeon, therapist, hospital, clinic, or other health care provider that David Bradley Drawbaugh will require care, treatment or surgery in the future as a result of injuries alleged in the proposed complaint? If so, identify by named [sic] and address ***each*** health care provider having so advised you and describe the type(s) of future care, treatment, or surgery, the reasons therefore, and the approximate cost.
>
> ANSWER: Yes. Dr. Peter G. Mavrelis, M.D. and Dr. Ramakrishnan Unni, M.D. See attached Notes & medical records. May need future surgery and will require continued use of medication.

Id. at 304.

On April 11, 2007, the Drawbaughs filed a response to Dr. Stanish's motion for dismissal, which stated that the Drawbaughs had served Dr. Stanish with their answers and response to request for production. The Drawbaughs' response alleged that the Drawbaughs' attorney received a letter from Dr. Stanish's attorney "indicating that the discovery responses were received, but that since the Interrogatories are not signed by the

Plaintiff, they are not withdrawing the current Motion for Dismissal." Id. at 86. The response alleged that David Drawbaugh prepared the answers himself and that "there will be no corrections or modifications." Id. at 87. The response also alleged that the Drawbaughs' attorney "ha[d] been trying to contact [David Drawbaugh] for several weeks and today was able to speak with him and he is out of town, but is faxing his signature page within the next several days after he gets near a fax machine." Id. The Drawbaughs argued that dismissal of the action was inappropriate because there was no prejudice to Dr. Stanish because he had "all the information requested except for the signature page and the [Drawbaughs' attorney] ha[d] indicated as an officer of the court that there will be no changes to the Interrogatory Answers" and "the signature page should be forthcoming within the next few days." Id.

On April 11, 2007, the trial court issued an order upon Dr. Stanish's motion and dismissed the Drawbaughs' complaint with prejudice for failure to comply with the trial court's order compelling discovery.[7]

On April 26, 2007, the Hospital filed a motion for sanctions, which requested the trial court to dismiss the Drawbaughs' complaint "with prejudice, or otherwise sanction them, because they have failed to comply with the court's discovery order of March 2, 2007," which ordered the Drawbaughs to "answer or respond, as required by law, to the interrogatories and requests for production of documents previously served upon them by

[7] The trial court's order is file stamped as filed in open court on April 5, 2007, and as received on April 11, 2007. The chronological case summary indicates that the cause was dismissed with prejudice

the hospital in the underlying medical malpractice case within 20 days from the date of this order." Id. at 79, 144. The Hospital's motion alleged in part:

* * * * *

> 3. By letter dated March 27, 2007, the Drawbaughs served the hospital with unsigned answers to interrogatories and responses to the requests for production of documents. . . .
>
> 4. By letter dated April 19, 2007, [the Drawbaughs' attorney] sent the hospital a signature page to be attached to the Drawbaughs' interrogatory answers. . . .
>
> 5. The Drawbaughs have failed to comply with the court's discovery order. Their answers to Interrogatories Nos. 4, 11, 18, 19, 20, 22, 23, and 25 are incomplete, evasive or unresponsive. The Drawbaughs have also failed to produce the documents requested in Items Nos. 5, 6, and 13 of the requests for production. . . .
>
> 6. The Drawbaughs have never objected to the hospital's discovery, requested additional time from the court within which to respond, or otherwise explained their difficulty in answering the discovery at issue.

Id. at 145.

On April 27, 2007, the Drawbaughs filed a verified motion to correct errors and / or motion to set aside the dismissal granted to Dr. Stanish. The Drawbaughs argued that "[p]ursuant to the Indiana Rules of Trial Procedure and Local Rules the Drawbaughs should have been given eighteen (18) days to respond to Stanish's Motion for Dismissal." Id. at 178. The Drawbaughs argued that their response to Dr. Stanish's March 22, 2007 motion for dismissal "was filed by Certified Mail and should have been file stamped by

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on April 11, 2007.

the Clerk's office as of April 9, 2007, pursuant to Indiana Trial Rule 5(F)."[8] Id. The Drawbaughs also argued that "prior to receiving Drawbaughs' response and prior to the deadline for Drawbaughs to file their Response, the Court dismissed this case on April 4, 2007." Id. The response alleged that Dr. Stanish's attorney "was provided with the signature page of David Drawbaugh for his Answers to Interrogatories on April 10, 2007." Id. at 178.

On May 4, 2007, the trial court held an initial status conference and set a hearing for June 5, 2007 to address all pending matters. On May 16, 2007, Dr. Stanish filed a response in opposition to the Drawbaughs' motion to correct error. On May 16, 2007, the Drawbaughs filed a response to the Hospitals' motion for sanctions. The Drawbaughs conceded that they needed to supplement their answers to the Hospital's Interrogatories 4, 20, 22, and 25 and provide the documentation requested in request for production items 5, 6, and 13. The Drawbaughs argued that their answers to Interrogatories 11, 18, 19, and 23 were "not incomplete, evasive or unresponsive based on the Drawbaugh's [sic] current knowledge." Id. at 247.

[8] The Drawbaughs' response was file stamped April 11, 2007. The response is also stamped "CERTIFIED MAIL POST MARKED APR 09 2007." Appellants' Appendix at 86. The chronological case summary reveals the following entry for April 12, 2007: "Mail – PLEADINGS RECEIVED IN CLERKS OFFICE 4-11-07 VIA CERTIFIED MAIL POSTMAKRED 4-09-07 PLAINTIFF, BY COUNSEL, FILES RESPONSE TO MOTION TO DISMISS , THIS DOCUMENT WAS[ ] SENT PURSUANT TO TRIAL RULE .//SM." Id. at 9.

At some point, the Hospital filed a reply memorandum in support of its amended petition and motion for sanctions.[9] The memorandum alleged that the Drawbaughs' answers to Interrogatories 4, 11, 18, 19, 20, 22, 23 were inadequate. The memorandum alleged, in part:

> In response to interrogatory No. 11 regarding physicians' statements about the quality of the medical care at issue, they have failed to provide pertinent physician addresses and dates and the substance of any such statements – even while suggesting by their answer that such statements exist.
>
> In response to interrogatory No. 18, they have failed to identify specific future care and treatment, the reasons therefor and approximate cost.

Id. at 334.

On June 5, 2007, the trial court held a hearing on the pending motions. At the hearing, the Hospital's attorney made the following arguments regarding Interrogatories 11 and 18:

> In response to Interrogatory No. 11, regarding inquiry about physician statements, about the quality of medical care at issue in this case, they gave us an answer suggesting there were such statements, but they failed to provide pertinent physician addresses, the dates of the statements or the substance of the statements.
>
> In response to Interrogatory No. 18, regarding future specific care, they failed to identify the specific future care or treatment that the – Mr. Drawbaugh may require, the reasons therefore, the approximate cost.
>
> * * * * *

[9] While this memorandum is filed stamped June 6, 2007, the Drawbaughs and the Hospital both acknowledge that the memorandum was addressed at the hearing that occurred on June 5, 2007. See Appellants' Brief at 4 n.1; Hospital's Brief at 6 n.1.

> In some of their answers, specifically the answers to Nos. 11, 19, and 23 of the interrogatories, they make a vague reference to other documents produced to the hospital. But the fact of the matter is that you cannot reasonably ascertain the answers to any of these interrogatories by any of the documents that have been produced thus far. They just don't provide that kind of information.

Transcript at 26.

The trial court granted the Drawbaughs' motion to set aside the dismissal regarding Dr. Stanish. However, the trial court stated that it would "put some parameters on that" by imposing "some time limits because I do not want the same problems in this case to recur and recur and recur." Id. at 20. The trial court ordered the Drawbaughs as follows: "Today is June 5th, by June 15th, which is about a week – it's about eight days, eight business days, every issue in Mr. Tyler's motion is to be addressed and those answers are to be completed to the standards he's requested of the Court in his motion, okay." Id. at 42. The trial court warned the Drawbaughs' attorney, "Now, let me be clear also that failure to do so shall request [sic] in sanctions up to the possibility of dismissal." Id. at 42-43. The trial court also stated, "I'm not giving [the Drawbaughs] anymore extensions." Id. at 45.

On June 14, 2007, the trial court entered the following order:

ORDER

* * * * *

> The motion to correct errors filed by the Drawbaughs is granted and the court's order of April 5, 2007, dismissing their proposed medical malpractice complaint against Dr. Stanish is set aside. The Drawbaughs' proposed complaint against Dr. Stanish is hereby reinstated. The court

grants this relief because it finds the Drawbaughs had insufficient time in which to respond to Dr. Stanish's motion to dismiss before entering its dismissal order, and because the Drawbaughs were not sufficiency [sic] forewarned that failure to comply with the court's discovery order of February 26 may result in the dismissal of their underlying medical malpractice claim.

The hospital's amended petition and motion for sanctions against the Drawbaughs – which specifically seeks dismissal of their proposed malpractice complaint against the hospital – is denied. However, in so ruling the court finds that the Drawbaughs have not complied with the court's discovery order of March 2 and their failure to do so is without legal justification or excuse.

The court, therefore, orders as follows: The Drawbaughs shall serve upon the hospital, no later than June 15, 2007, supplemental answers to interrogatories and responses to requests for production of documents which are complete and responsive and which otherwise remedy the specific insufficiencies about which the hospital has complained during this proceeding. If there is any remaining dispute after service of the Drawbaughs' forthcoming supplemental discovery responses, hospital counsel, Stephen A. Tyler, shall coordinate a telephone conference call between the attorneys and the court, preferably no later than June 18, at which time the court shall take further appropriate action in support of this order.

In rendering its ruling today, the court specifically admonishes the Drawbaughs as follows: All supplemental discovery responses served by them in contemplation of this order shall be signed by them under oath or affirmation or shall otherwise comply in all respects with the rules of procedure governing discovery. The Drawbaughs' failure to comply with this order – in any regard – shall result in sanctions which may include dismissal with prejudice of their underlying medical malpractice claims. The court shall tolerate *no* further delays in the discovery process on account of the Drawbaughs' conduct. The deadlines established by the court in this matter shall not be altered or amended due to the Drawbaughs' conduct, even in the event that their current attorneys withdraw and the Drawbaughs require additional time in which to obtain replacement counsel.

> The parties are further ordered to complete the striking process for selection of the medical review panel no later than June 22, 2007, subject to notification of the selected panel doctors by the panel chairman, Mr. Satterlee. The court shall defer to Mr. Satterlee to establish an appropriate schedule for tender of the parties' panel submissions.

Appellants' Appendix at 337-339.

On June 15, 2007, the Drawbaughs served the Hospital with supplemental discovery responses. The Drawbaughs filed an answer to Interrogatory 11 that was similar to its initial answer. Specifically, Interrogatory 11 and the Drawbaughs' revised answer follow:

> 11. Do you know of ***any*** written or oral statement by a medical practitioner of any kind containing a remark or opinion concerning the quality of care, treatment of services rendered to David Bradley Drawbaugh by the hospital in this case? If so, for ***each*** statement state the name and address of the practitioner who made the statement, whether the statement was written or oral, the date of the statement, and the substance of the statement.
>
> ANSWER:
>
> 1.) Dr. Paul J. Stanish. Both orally and to a lesser degree in his post-operative report Medical Records Methodist Hospital Southlake.
> 2.) Dr. Daniel B. Hurwich. Orally to a lesser degree and Written. Medical Records. Methodist Hospital Southlake.
> 3.) Dr. Kumar Venkat. Orally post-operative. Medical Records. Methodist Hospital Southlake.
> 4.) Dr. Ramakrishnan Unni, M.D., F.A.C.S. Both orally and written. Medical Records. Methodist Hospital Southlake.
>
> See also Notes attached to Request for Production Response. Discovery continues and this answer will be duly supplemented if necessary.

Id. at 356-357.[10] The Drawbaughs expanded their answer for Interrogatory 18[11] by listing four medications Drawbaugh required and their cost.

On June 22, 2007, the Chairman of the Medical Review Panel sent an e-mail to all counsel that "PER THE COURT'S ORDER DATED 6/14/07, THE PLAINTIFFS HAVE NOT MADE THEIR STRIKE FROM THE PLAINTIFF'S STRIKING PANEL. IT IS CURRENTLY 4:33 P.M." Id. at 367. On Sunday, June 24, 2007, the Drawbaughs' attorney sent an e-mail striking "Dr. Jon F. Geers from the Plaintiff's Panel of General Surgeons." Id. at 340. On June 25, 2007, the Hospital filed a verified report to the trial court and renewed motion for sanctions. The Hospital alleged that "[t]he Drawbaughs served [the Hospital] with supplemental discovery responses on June 15, 2007;" however "they did not comply with the requirement contained in the court's June 14 discovery order to remedy the insufficiencies about which the hospital has complained." Id. at 343-344. Specifically, the Hospital alleged:

> In answer to interrogatory No. 11 regarding physicians' statements about the quality of the medical care at issue, they still have failed to state the dates and substance of oral statements allegedly made by the physicians identified in the answer. In answer to interrogatory No. 18, they still have failed to specifically identify the future surgery which may be required by David Drawbaugh on account of the incident alleged in the proposed

[10] This answer differs from the initial answer to Interrogatory 11 in that the fourth entry in the initial answer reads, "Dr. Ramakrishnan Unni, M.D., F.A.C.S.. Both orally and written. Discovery continues and this answer will be duly supplemented if necessary." Appellants' Appendix at 300.

[11] Interrogatory 18 asked "Have you been advised by ***any*** doctor, surgeon, therapist, hospital, clinic, or other health care provider that David Bradley Drawbaugh will require care, treatment or surgery in the future as a result of injuries alleged in the proposed complaint? If so, identify by named [sic] and address ***each*** health care provider having so advised you and describe the type(s) of future care, treatment, or surgery, the reasons therefore, and the approximate cost." Appellant's Appendix at 360-361.

> complaint, the reasons therefor, and the approximate cost. The missing information is highly relevant to [the Hospital]'s investigation of the Drawbaughs' claims and preparation of a defense submission to the medical review panel.

Id. at 344. The Hospital also alleged that the Drawbaughs "failed to complete their portion of the striking process for selection of the medical review panel physicians by June 22, 2007, as required by the court's June 14 order." Id. On June 25, 2007, Dr. Stanish filed a notice of joinder in the Hospital's motion for sanctions and requested the trial court to dismiss the Drawbaughs' complaint "due to [the Drawbaughs'] failure to comply with discovery deadlines and this Court's order of June 14, 2007." Id. at 368. On June 26, 2007, a telephonic conference occurred on the motion for sanctions and the trial court took the matter under advisement.

On August 9, 2007, the trial court entered an order dismissing the Drawbaughs' complaint against Dr. Stanish and the Hospital with prejudice. The trial court's order stated, in part:

> The court, being duly advised, now finds that respondents Drawbaugh have not complied with the court's discovery order, because they did not tender complete and responsive supplemental answers to the hospital's discovery by June 15 and they did not complete their portion of the striking process for selection of the medical review panel by June 22, all of which was expressly required by the court's order. The Drawbaughs have demonstrated a contumacious pattern of behavior in regard to compliance with the court's discovery orders which warrants the dismissal with prejudice of their underlying medical malpractice action.

Id. at 15-16.

On September 11, 2007, the Drawbaughs filed a verified motion to correct error and/or motion to set aside dismissal, which the trial court denied.

I.

The first issue is whether the trial court abused its discretion by denying the Drawbaughs' motion to correct error.[12] The standard of appellate review of trial court rulings on motions to correct error is abuse of discretion. Paragon Family Restaurant v. Bartolini, 799 N.E.2d 1048, 1055 (Ind. 2003). An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before the court, including any reasonable inferences therefrom. Id.

The trial court dismissed the Drawbaughs' complaint because the Drawbaughs: (1) did not tender complete and responsive supplemental answers to the Hospital's discovery; (2) demonstrated a contumacious pattern of behavior in regard to compliance with the trial court's discovery orders; and (3) did not complete their portion of the striking process for selection of the medical review panel by June 22. The trial court's first two reasons for dismissing the Drawbaughs' complaint rest in the rules of discovery. The trial court's third reason rests in its authority to enforce the Medical Malpractice Act.

A. Jurisdiction

[12] In their reply brief, the Drawbaughs argue that the trial court "erroneously entered a proposed form order in violation of Trial Rule 58." Appellants' Reply Brief at 9. However, the Drawbaughs did not cite Ind. Trial Rule 58 or make this argument in their original brief. "[A]ny argument an appellant fails to raise in his initial brief is waived for appeal." Kelly v. Levandoski, 825 N.E.2d 850, 858 n.2 (Ind. Ct. App. 2005), trans. denied. Thus, the Drawbaughs have waived this issue. See Felsher v. University of Evansville, 755 N.E.2d 589, 593 n.6 (Ind. 2001) (holding that appellant waived issue because he raised the issue for the first time in his reply brief).

Initially, we address the Drawbaughs' argument, which they raise for the first time in their reply brief, that the trial court did not have subject matter jurisdiction sufficient to set deadlines in the panel striking process. Generally, "any argument an appellant fails to raise in his initial brief is waived for appeal." Kelly v. Levandoski, 825 N.E.2d 850, 858 n.2 (Ind. Ct. App. 2005), trans. denied. However, subject matter jurisdiction can be raised at any time. See Madison Ctr., Inc. v. R.R.K., 853 N.E.2d 1286, 1288 (Ind. Ct. App. 2006) ("Subject-matter jurisdiction cannot be waived and may be raised by the parties or the court at any time, including on appeal."), trans. denied; Marriage of Thomas v. Smith, 794 N.E.2d 500, 503 (Ind. Ct. App. 2003) ("A judgment entered by a court that lacks subject matter jurisdiction is void and may be attacked at any time."), trans. denied; In re J.L.T., 712 N.E.2d 7, 10 n.4 (Ind. Ct. App. 1999) (addressing challenge to the subject matter jurisdiction of the juvenile court even though it was raised for the first time in the reply brief), reh'g denied, trans. denied. To the extent that the Drawbaughs' argue error other than subject matter jurisdiction, the Drawbaughs' arguments are waived. To the extent that the Drawbaughs' argue that the trial court did not have subject matter jurisdiction, we will address the Drawbaughs' argument.

"Subject matter jurisdiction is the power to hear and determine cases of the general class to which any particular proceeding belongs." K.S. v. State, 849 N.E.2d 538, 540 (Ind. 2006). "The question of subject matter jurisdiction entails a determination of whether a court has jurisdiction over the general class of actions to which a particular

case belongs." Id. (quoting Troxel v. Troxel, 737 N.E.2d 745, 749 (Ind. 2000), reh'g denied). The Indiana Supreme Court has held:

> Thus, while we might casually say, "Judge Flywheel assumed jurisdiction," or "the court had jurisdiction to impose a ten-year sentence," such statements do not have anything to do with the law of jurisdiction, either personal or subject matter. Real jurisdictional problems would be, say, a juvenile delinquency adjudication entered in a small claims court, or a judgment rendered without any service of process.

Id. at 541-542.

Ind. Code § 33-28-1-2 provides that "[t]he circuit court has original jurisdiction in all civil cases and in all criminal cases, except where exclusive jurisdiction is conferred by law upon other courts of the same territorial jurisdiction." The Lake Superior Court, which was the trial court in this case, "is likewise a court of general jurisdiction." Kozlowski v. Dordieski, 849 N.E.2d 535, 537 (Ind. 2006) (citing Ind. Code §§ 33-33-45-3, -6).[13] Ind. Code § 34-18-11-1 governs discovery and preliminary rulings in medical malpractice cases and provides:

> (a) A court having jurisdiction over the subject matter and the parties to a proposed complaint filed with the commissioner under this article may, upon the filing of a copy of the proposed complaint and a written motion under this chapter, do one (1) or both of the following:
>
> (1) preliminarily determine an affirmative defense or issue of law or fact that may be preliminarily determined under the Indiana Rules of Procedure; or
>
> (2) compel discovery in accordance with the Indiana

[13] Ind. Code § 33-33-45-6 provides that the Lake Superior Court has "the same jurisdiction as the Lake circuit court in all civil and probate cases and matters whether original or appellate."

Rules of Procedure.

(b) The court has no jurisdiction to rule preliminarily upon any affirmative defense or issue of law or fact reserved for written opinion by the medical review panel under IC 34-18-10-22(b)(1), IC 34-18-10-22(b)(2), and IC 34-18-10-22(b)(4).

(c) The court has jurisdiction to entertain a motion filed under this chapter only during that time after a proposed complaint is filed with the commissioner under this article but before the medical review panel gives the panel's written opinion under IC 34-18-10-22.

* * * * *

Ind. Code § 34-18-11-5 also provides that "[t]he court may enforce its ruling on any motion filed under this chapter in accordance with the Indiana Rules of Procedure, subject to the right of appeal." Ind. Code § 34-18-10-3 provides that "[t]he chairman of the medical review panel shall expedite the selection of the other panel members, convene the panel, and expedite the panel's review of the proposed complaint." Ind. Code § 34-18-10-14 provides that "[a] party, attorney, or panelist who fails to act as required by this chapter without good cause shown is subject to mandate or appropriate sanctions upon application to the court designated in the proposed complaint as having jurisdiction." Based upon these statutes, we conclude that the trial court had subject matter jurisdiction over these preliminary matters and that the imposition of sanctions for failing to meet a deadline to strike members from the medical review panel falls under this general scope of authority.[14] See Galindo v. Christensen, 569 N.E.2d 702, 706 (Ind.

[14] As previously mentioned, to the extent that the Drawbaughs suggest that the trial court did not have the statutory authority to impose such a deadline, we conclude that the Drawbaughs waived this

Ct. App. 1991) (holding that the trial court had subject matter jurisdiction over the question of sanctions and the statutory authority to impose sanctions, including dismissal, in the exercise of its sound discretion).

B. Abuse of Discretion

As previously mentioned, the trial court dismissed the Drawbaughs' complaint because the Drawbaughs: (1) did not tender complete and responsive supplemental answers to the Hospital's discovery; (2) demonstrated a contumacious pattern of behavior in regard to compliance with the trial court's discovery orders; and (3) did not complete their portion of the striking process for selection of the medical review panel by June 22, 2007. The trial court's first two reasons for dismissing the Drawbaughs' complaint rest in the rules of discovery. The trial court's third reason rests in its authority to enforce the Medical Malpractice Act. We review the trial court's decision for both of these bases under the same standard, abuse of discretion. See Hatfield v. Edward J. DeBartolo Corp., 676 N.E.2d 395, 399 (Ind. Ct. App. 1997) (holding that the trial court has broad discretion in ruling on issues of discovery and we reverse only when the trial court has abused its discretion), reh'g denied, trans. denied; Beemer v. Elskens, 677 N.E.2d 1117, 1119-1120 (Ind. Ct. App. 1997) (noting Ind. Code § 27-12-10-14, the predecessor to Ind. Code § 34-18-10-14, and holding that we review a dismissal of a proposed complaint under the Medical Malpractice Act for an abuse of discretion), reh'g denied, trans.

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argument by raising it for the first time in their reply brief.

denied. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or when the trial court has misinterpreted the law. Trs. of Purdue Univ. v. Hagerman Const. Corp., 736 N.E.2d 819, 820 (Ind. Ct. App. 2000), trans. denied.

Regarding the trial court's reasons based on discovery, the rules of discovery are designed to "allow a liberal discovery process, the purposes of which are to provide parties with information essential to litigation of the issues, to eliminate surprise, and to promote settlement." Hatfield, 676 N.E.2d at 399. Although discovery is intended to require "little, if any, supervision or assistance by the trial court," when the goals of this system break down, Ind. Trial Rule 37 provides the trial court with tools to enforce compliance. Id. Ind. Trial Rule 37(B)(2) permits a trial court to sanction litigants for their failure to comply with discovery orders. The rule provides, in pertinent part, as follows:

> (B) Failure to comply with order.
>
> * * * * *
>
> (2) Sanctions by court in which action is pending. If a party or an officer, director, or managing agent of a party or an organization . . . fails to obey an order to provide or permit discovery, including an order made under subdivision (A) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> * * * * *

> (c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

The decision to impose the sanction of dismissal for a party's failure to comply with a discovery order is a matter within the trial court's discretion.[15] Nesses v. Specialty Connectors Co., Inc., 564 N.E.2d 322, 327 (Ind. Ct. App. 1990).

1. Drawbaughs' Answers

While the Hospital initially challenged a number of the Drawbaughs' answers to interrogatories and responses to requests for production, the Hospital's June 25, 2007 motion for sanctions alleged that the Drawbaughs' answers to Interrogatory 11 and Interrogatory 18 were inadequate. Specifically, the Hospital's June 25, 2007 verified report and renewed motion for sanctions alleged, in part:

> The Drawbaughs served the hospital with supplemental discovery responses on June 15, 2007. In doing so, they did not comply with the requirement contained in the court's June 14 discovery order to remedy the insufficiencies about which the hospital has complained. In answer to interrogatory No. 11 regarding physicians' statements about the quality of the medical care at issue, they still have failed to state the dates and substance of oral statements allegedly made by the physicians identified in the answer. In answer to interrogatory No. 18, they still have failed to

[15] The Drawbaughs rely on Pitts v. Johnson County Dep't of Public Welfare, 491 N.E.2d 1013 (Ind. Ct. App. 1986), for the argument that "lesser sanctions should be imposed on parties who fail to comply with discovery unless there has been contumacious disregard of the court's Orders or lesser sanctions have not been effective." Appellants' Brief at 20. We have previously held that "Trial Rule 37 has been substantially rewritten and no longer requires a trial court to impose a lesser sanction before dismissing an action or entering a default judgment, especially where the 'disobedient party has demonstrated contumacious disregard for the court's orders.'" Bankmark of Florida, Inc. v. Star Financial Card Services, Inc., 679 N.E.2d 973, 978 (Ind. Ct. App. 1997) (quoting Rivers v. Methodist Hospitals, Inc., 654 N.E.2d 811, 814 (Ind. Ct. App. 1995)).

> specifically identify the future surgery which may be required by David Drawbaugh on account of the incident alleged in the proposed complaint, the reasons therefor, and the approximate cost. The missing information is highly relevant to the hospital's investigation of the Drawbaughs' claims and preparation of a defense submission to the medical review panel.

Appellants' Appendix at 343-344. Thus, we focus on the Drawbaughs' answers to these two interrogatories.

Interrogatory 11 and the Drawbaughs' initial answer follow:

> 11. Do you know of ***any*** written or oral statement by a medical practitioner of any kind containing a remark or opinion concerning the quality of care, treatment of services rendered to David Bradley Drawbaugh by the hospital in this case? If so, for ***each*** statement state the name and address of the practitioner who made the statement, whether the statement was written or oral, the date of the statement, and the substance of the statement.
>
> ANSWER:
>
> 1.) Dr. Paul J. Stanish. Both orally and to a lesser degree in his post-operative report Medical Records Methodist Hospital Southlake.
> 2.). Dr. Daniel B. Hurwich. Orally to a lesser degree and Written. Medical Records. Methodist Hospital Southlake.
> 3.) Dr. Kumar Venkat. Orally post-operative. Medical Records. Methodist Hospital Southlake.
> 4.) Dr. Ramakrishnan Unni, M.D., F.A.C.S.. Both orally and written. Discovery continues and this answer will be duly supplemented if necessary.
>
> See also Notes attached to Request for Production Response. Discovery continues and this answer will be duly supplemented if necessary.

Id. at 300. The Drawbaughs supplemental answer was substantially similar and follows:

> 5.) Dr. Paul J. Stanish. Both orally and to a lesser degree in his post-operative report Medical Records Methodist Hospital Southlake.
> 6.) Dr. Daniel B. Hurwich. Orally to a lesser degree and Written. Medical Records. Methodist Hospital Southlake.

7.) Dr. Kumar Venkat. Orally post-operative. Medical Records. Methodist Hospital Southlake.
8.) Dr. Ramakrishnan Unni, M.D., F.A.C.S. Both orally and written. Medical Records. Methodist Hospital Southlake.

See also Notes attached to Request for Production Response. Discovery continues and this answer will be duly supplemented if necessary.

Id. at 356-357.

As previously noted, this answer differs from the initial answer only in that the fourth entry in the initial answer reads, "Dr. Ramakrishnan Unni, M.D., F.A.C.S.. Both orally and written. Discovery continues and this answer will be duly supplemented if necessary." Id. at 300. Thus, Interrogatory 11 is essentially the same. The Notes referenced in the answer reflect comments by the doctors about the quality of care by Dr. Stanish, but they do not address the Hospital's conduct. The Drawbaughs' revised answer to Interrogatory 11 also does not address the dates of the statements. Interrogatory 18 and the Drawbaughs' initial answer follow:

18. Have you been advised by ***any*** doctor, surgeon, therapist, hospital, clinic, or other health care provider that David Bradley Drawbaugh will require care, treatment or surgery in the future as a result of injuries alleged in the proposed complaint? If so, identify by named [sic] and address ***each*** health care provider having so advised you and describe the type(s) of future care, treatment, or surgery, the reasons therefore, and the approximate cost.

ANSWER: Yes. Dr. Peter G. Mavrelis, M.D. and Dr. Ramakrishnan Unni, M.D. See attached Notes & medical records. May need future surgery and will require continued use of medication.

Appellants' Appendix at 304. The Drawbaughs' supplemental answer follows:

> ANSWER: Yes. Dr. Peter G. Mavrelis, M.D. and Dr. Ramakrishnan Unni, M.D. See attached Notes & medical records. May need future surgery and will require continued use of medication as follows:
> Flomax – 100 mg $3,226.20 / year
> Uroxatral – 100 mg $3,226.20 / year
> Detrol – 30 mg $1,378.80 / year
> Xanax – 5mg $1,181.04 / year

Id. at 360-361. The Drawbaughs' supplemental answer did not completely address the Hospital's concerns regarding the reasons for the care and the possibility of surgery. The Drawbaughs did not specify any surgery or the cost of surgery. On appeal, the Drawbaughs argue that "[t]he Notes reflect that [David] has been told that he ***may*** require catheritization [sic] due to the Defendant's negligence," and "[t]his could be considered a surgery." Appellant's Brief at 20. However, the Drawbaughs did not suggest that catheterization constituted a surgery or that they were uncertain of the cost in their answer. We conclude that the trial court did not abuse its discretion by finding that the Drawbaughs' failed to tender complete and responsive supplemental answers.

2. Contumacious Pattern of Behavior

The trial court also found that the Drawbaughs demonstrated a contumacious pattern of behavior in regard to compliance with the trial court's discovery orders. The record reveals that Dr. Stanish and the Hospital served interrogatories and requests for production of documents in August 2006. In February 2007, Dr. Stanish and the Hospital filed motions to compel discovery. The trial court subsequently entered two orders requiring the Drawbaughs to answer Dr. Stanish and the Hospital within twenty days. The trial court's March 2, 2007 order stated that the Drawbaughs "are further admonished

that failure to comply with this order may result in sanctions pursuant to Ind. Trial Rule 37(B), which could include dismissal with prejudice of their underlying medical malpractice action." Appellants' Appendix at 79-80. The Drawbaughs delivered unsigned answers to Dr. Stanish and the Hospital after the twenty-day deadlines imposed by the trial court. On April 11, 2007, the trial court dismissed the Drawbaughs' complaint against Dr. Stanish with prejudice for failure to comply with the trial court's order compelling discovery. In May 2007, the Drawbaughs conceded to the Hospital that they needed to supplement answers to Interrogatories 4, 20, 22, and 25 and provide the documentation requested in request for production items 5, 6, and 13.

At the June 5, 2007 hearing, the trial court granted the Drawbaughs' motion to set aside the dismissal regarding Dr. Stanish but did not want the "same problems in this case to recur and recur and recur." Transcript at 20. The trial court ordered the Drawbaughs as follows: "Today is June 5th, by June 15th, which is about a week – it's about eight days, eight business days, every issue in Mr. Tyler's motion is to be addressed and those answers are to be completed to the standards he's requested of the Court in his motion, okay." Id. at 42. The trial court warned the Drawbaughs' attorney, "Now, let me be clear also that failure to do so shall request [sic] in sanctions up to the possibility of dismissal." Id. at 42-43. The trial court also stated, "I'm not giving [the Drawbaughs] anymore extensions." Id. at 45. The trial court's June 14, 2007, order stated in part:

> [T]he court finds that the Drawbaughs have not complied with the court's discovery order of March 2 and their failure to do so is without legal justification or excuse.

* * * * *

> The Drawbaughs' failure to comply with this order – in any regard – shall result in sanctions which may include dismissal with prejudice of their underlying medical malpractice claims. The court shall tolerate *no* further delays in the discovery process on account of the Drawbaughs' conduct. The deadlines established by the court in this matter shall not be altered or amended due to the Drawbaughs' conduct, even in the event that their current attorneys withdraw and the Drawbaughs require additional time in which to obtain replacement counsel.

Appellants' Appendix at 338-339. We cannot say that the trial court abused its discretion by finding that the Drawbaughs demonstrated a contumacious pattern of behavior.

3. Deadline for Striking Medical Review Panel

As previously mentioned, we review a dismissal of a proposed complaint under the Medical Malpractice Act for an abuse of discretion. "The appropriate considerations for the court in exercising its discretion as to the appropriate sanctions for the failure of a party to comply with the act is whether the breach of duty was intentional or contumacious and whether prejudice resulted." Rivers v. Methodist Hospitals, Inc., 654 N.E.2d 811, 815 (Ind. Ct. App. 1995) (relying on Galindo, 569 N.E.2d at 706).

The Drawbaughs concede that they "did not strike from the last medical review panel by June 22, 2007 as required by the Court's order." Appellants' Brief at 20. The Drawbaughs argue that "this was due to an oversight, as counsel for Plaintiffs already thought this strike had been made." Id. The Drawbaughs argue that their counsel did not receive the e-mail that was sent on Friday, June 22, 2007, "until Sunday June 24, 2007 because it was sent to the wrong email address initially." Id. The Drawbaughs argue that

"no prejudice was incurred to the Defendants by this 'late strike' and no delay in the proceedings occurred due to a strike that was supposed to be done by 5:00 on a Friday and was done prior to the next Monday morning." Id. at 21.

While prejudice may not have resulted from the Drawbaughs striking of a panel member on Sunday instead of Friday, we must view the Drawbaughs' failure to meet the deadline in light of the Drawbaughs' repeated failures to meet deadlines, the trial court's repeated warnings, and the Drawbaughs failure to fully answer Interrogatories 11 and 18. Under the circumstances, we conclude that the trial court did not abuse its discretion by dismissing the Drawbaughs' complaint with prejudice and by denying the Drawbaughs' motion to correct error. See, e.g., Rivers v. Methodist Hospitals, Inc., 654 N.E.2d 811, 815 (Ind. Ct. App. 1995) (affirming the trial court's dismissal of a medical malpractice action due to the plaintiff's repeated failures regarding discovery and failure to participate in the election of a medical review panel chairman); Castillo v. Ruggiero, 562 N.E.2d 446, 454-455 (Ind. Ct. App. 1990) (holding that the trial court did not abuse its discretion by granting dismissal of the action with prejudice), trans. denied.

II.

The next issue is whether the trial court abused its discretion by denying the Drawbaughs' motion for relief from judgment under Ind. Trial Rule 60(B)(8). A grant of equitable relief under Ind. Trial Rule 60 is within the discretion of the trial court. Outback Steakhouse of Florida, Inc. v. Markley, 856 N.E.2d 65, 72 (Ind. 2006). Accordingly, we review a trial court's ruling on Rule 60 motions for abuse of discretion.

Id. "An abuse of discretion occurs when the trial court's judgment is clearly against the logic and effect of the facts and inferences supporting the judgment for relief." Ford Motor Co. v. Ammerman, 705 N.E.2d 539, 558 (Ind. Ct. App. 1999), reh'g denied, trans. denied, cert. denied, 529 U.S. 1021, 120 S. Ct. 1424 (2000).

Ind. Trial Rule 60(B)(8) provides:

> (B) Mistake--Excusable neglect--Newly discovered evidence--Fraud, etc. On motion and upon such terms as are just the court may relieve a party or his legal representative from an entry of default, final order, or final judgment, including a judgment by default, for the following reasons:
>
> * * * * *
>
> (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).
>
> . . . . A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense. . . .

Relief under Ind. Trial Rule 60(B)(8) is "appropriate only upon a showing of exceptional circumstances justifying extraordinary relief." Showalter v. Brubaker, 650 N.E.2d 693, 699 (Ind. Ct. App. 1995).

The Drawbaughs argue that they are entitled to relief because "[p]ursuant to the Indiana Rules of Trial Procedure and Local Rules the Drawbaughs should have been given eighteen (18) days to respond to [the Hospital]'s Verified Report to Court and Renewed Motion for Sanctions and Stanish's Notice of Joinder in [the Hospital]'s

Renewed Motion."[16] Appellants' Brief at 22. The Hospital filed its renewed motion for sanctions on June 25, 2007. That same day, Dr. Stanish filed his notice of joinder. On June 26, 2007, a telephonic conference occurred on the motion for sanctions and the trial court took the matter under advisement. On August 9, 2007, more than eighteen days since Dr. Stanish's joinder, the trial court entered an order dismissing the Drawbaughs' complaint with prejudice. The Drawbaughs do not explain why they did not file a response between June 25, 2007 and the trial court's order of August 9, 2007, a time period exceeding eighteen days.

The Drawbaughs also cite Lake County Civil Procedure Rule 8(C), which provides that the trial court "will not rule on motions related to discovery disputes unless moving counsel represents that, after personal or telephonic conference in good faith effort to resolve differences, counsel are unable to reach accord." Lake County Rule 45-T.R.26-8. The Drawbaughs argue that "[t]here was never a personal or telephonic conference between the undersigned and either attorney for the other attorneys regarding the basis for the renewed request for sanctions and motion for joinder." Appellants' Brief at 23. However, the record reveals that the trial court's June 14, 2007 order stated, "If there is any remaining dispute after service of the Drawbaughs' forthcoming supplemental discovery responses, hospital counsel, Stephen A. Tyler, shall coordinate a telephone conference call between the attorneys and the court, preferably no later than

[16] The Drawbaughs do not cite to a rule requiring that the Drawbaughs should have been given eighteen days.

June 18, at which time the court shall take further appropriate action in support of this order." Appellants' Appendix at 347. The record reveals that after the Hospital's motion for sanctions and Dr. Stanish's motion for joinder, a telephonic conference occurred on the motion for sanctions and the trial court took the matter under advisement.[17] Under the circumstances, we do not find the Drawbaughs' argument persuasive. We cannot say that the trial court's denial of the Drawbaughs' motion under Ind. Trial Rule 60(B)(8) constituted an abuse of discretion. See Showalter, 650 N.E.2d at 699 ("Under these circumstances, we do not find that the trial court's conditional denial of her T.R. 60(B)(8) motion constituted an abuse of discretion.").

For the foregoing reasons, we affirm the trial court's dismissal of the Drawbaughs' complaint.

Affirmed.

NAJAM, J. and ROBB, J. concur

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[17] The Drawbaughs argue in their reply brief that "at the outset of the telephonic hearing on June 25, 2007, the Drawbaugh's [sic] attorney specifically requested time to review the motion and respond appropriately under the Indiana Rules of Trial Procedure and Lake County Local Rules of Procedure," but "[t]his request was denied by the trial Court at the telephonic conference, which is why no subsequent written response was filed by the Drawbaughs." However, the Drawbaughs fail to cite to the record for this proposition.